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In re Application of :
Robert H. Shelton :
Application No. 60/037,869 : ON PETITION
Filed: February 10, 1997 :
Attorney Docket No. A-39-972-010 :

This is in response to the "Request for Corrected Original Application Filing Receipt," filed April 4, 1997,¹ which is being treated as a petition requesting a later filing date of February 17, 1997 rather than the presently accorded filing date of February 10, 1997.

The petition is dismissed.

Petitioner requests the later filing date on the basis that the application was purportedly deposited in Express Mail service on February 17, 1997, pursuant to the requirements of 37 CFR 1.10.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail"

The Office sincerely apologizes for the delay in responding to the instant petition and the inconvenience caused petitioner by this delay. The existence of the instant petition was not brought to the attention of the Office of Petitions until review was undertaken of the petition for a filing date in the later-filed utility application.

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mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a) (emphasis supplied).

37 CFR 1.10(c) states that:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

As clearly stated in 37 CFR 1.10(a), the date of deposit with the United States Postal Service (USPS) is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Thus, any petition alleging that the PTO did not accord a paper the date of deposit in Express Mail service as the filing date must be accompanied by "a true copy of the 'Express Mail' mailing label showing the 'date-in,' and of any other official notation by the USPS relied upon to show the date of deposit." 37 CFR 1.10(c)(3). The present petition is not accompanied by the evidence required by 37 CFR 1.10.

Accordingly, the petition is dismissed.

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It is noted that the filing date of this application was changed from "February 10, 1997" to -- February 17, 1996 --." However, while no evidence, as noted above, has been submitted to establish that a filing date other than February 10, 1997 should have been given this application, the attempt to correct the filing date was still in error. Therefore, the filing receipt giving a date of February 17, 1996 is vacated.

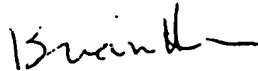
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
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By FAX: 703) 308-6916
Attn: Office of Petitions

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Telephone inquiries concerning this matter may be directed to Frances Hicks at (703) 305-8680.



Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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